

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on January 15, 2001 at 10:00 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Pete Ekegren (R)
Sen. Jim Elliott (D)
Sen. Eve Franklin (D)
Sen. Ken Toole (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Lynette Brown, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) SB49, SB51 & Date(s) Posted: 1-10-01
Executive Action:

HEARING ON SB 49

Sponsor: SEN. STEVE DOHERTY, SD 24, Great Falls

Proponents: Hal Harper
Matthew Leow, Mont. PIRG
Verner Bertelsen

Opponents: Steven Ertelt

Opening Statement by Sponsor:

SEN. STEVEN DOHERTY, SD 24, Great Falls, introduced SB 49. **SEN. DOHERTY** said SB49 is an attempt to do something about negative campaigning. This bill states that prior to being published or broadcast, a copy of the text of the election material in 1335225, which is a reference of the text of the election materials which are not to be considered anonymous, must be filed with the Commissioner of Political Practices. **SEN. DOHERTY** stated this bill is a small step which can be taken to clean up campaigns in Montana.

Proponents' Testimony:

Hal Harper, representing himself, shared that he just finished running a campaign in Helena. **Mr. Harper** said this bill attempts to make it harder for opponents to lie about the candidate and about the candidate's record. The intent of this bill is to give citizens more truth upon which to base their decisions. He stated there should be no trouble in filing a copy of certain ads. This bill says brakes are going to be put on negative advertising in making it harder to lie about your opponent or distort the truth.

Matthew Leow, Montana Public Interest Research Group, stated his organization is interested in cleaning up campaigns and having a more tasteful presentation to the public. This bill would act to curb some distasteful tone in political advertising. This would help to stop some of the non-truth misquotes and misrepresentations that do occur.

Verner Bertelsen, Montana Senior Citizens Association, urged support of this bill.

Opponents' Testimony: **Steven Ertelt, Montana Right to Life,** stated that the Christian Coalition and the Montana branch of the American Civil Liberties Union are both in opposition of this bill. The Montana Right to Life is in opposition to SB49 because this bill presents an undue burden to the Montana Right to Life political action committee as well as other candidate committees and other political action committees. This bill would add an additional requirement to file the text of communications along with an affidavit certifying that it is accurate. **Mr. Ertelt** said this would severely stretch their time, resources and manpower. **Mr. Ertelt** stated SB49 presents significant constitutional concerns. He said this bill opens up the door to unconstitutional regulation of free speech. **Mr. Ertelt** said SB40 opens up a Pandora's box in terms of litigation possibilities. He said the proposed requirement in this bill could violate the general constitutional immunity of issue advocacy from governmental regulation.

EXHIBIT(sts11a01) from the opponents Montana Libertarian Party was passed out to the committee.

EXHIBIT(sts11a02) from the Christian Coalition of Montana expressed opposition to this bill.

Questions from Committee Members and Responses:

SEN. JIM ELLIOTT said to **Steven Ertelt** that **Mr. Ertelt** had expressed concern about how a third party might evaluate the truth of the content; however, **SEN. ELLIOTT** said he could not see any reference to any evaluation by any party other than the party proposing the content. **Mr. Ertelt** responded that there is also no protection in the bill from preventing a third party from judging the political communication.

SEN. ELLIOTT asked **Commissioner Linda Vaughey** to comment on internal communications. **Ms. Vaughey** stated membership communications would not be covered under this bill. Membership communications are under 131101; they are excluded from having to be reported if those communications are restricted to the membership of an organization.

SEN. JOHN BOHLINGER told **Steven Ertelt** the people of Montana are concerned about an expression of truth; it's not just what you say, but what is the content and accuracy of what is said? **SEN. BOHLINGER** asked **Mr. Ertelt** if he sees this bill as an attempt to impose some requirement that when a person communicates, the person communicates the truth? **Mr. Ertelt** responded the supreme court ruled no governmental authority should be the subjective determiner of what is accurate speech. **Mr. Ertelt** said the supreme court ruling is a protection for individuals and organizations to prohibit the government from looking at something the organization said or printed and taking it out of context and declaring the organization is against someone when the organization may simply be stating a person's voting record on issues.

SEN. KEN TOOLE asked **Mr. Ertelt** why **Mr. Ertelt** is worried about voter analysis materials falling into examination as election materials? **Mr. Ertelt** answered because that is what has happened on a federal level; voter guides that organizations have put out have increasingly become subjected to express advocacy law. Because this is increasingly happening, **Mr. Ertelt's** organization does not want to see this happen in Montana where issue advocacy materials are subjected to the same laws as express advocacy.

SEN. ED BUTCHER asked **Linda Vaughey** how much would the work load increase if this bill passed? **Ms. Vaughey** referred to the fiscal

note attached to the bill where it is estimated at a cost of \$10,000. She said it is very difficult to anticipate the volume that will be received.

SEN. TOOLE asked **SEN. DOHERTY** to address the issue of libel and slander litigation resulting from this proposal. **SEN. DOHERTY** responded that the standard for proving libel and slander against a political figure is practically impossible to prove. As a political figure, you have to prove that the individual acted with malicious intent, that they knew the information was false, that they were aware the information was false, that they didn't care the information was false; instead, they were out to destroy your political career based on that particular standard. Therefore, the standard for libel and slander in dealing with political figures is an impossible task.

SEN. BOHLINGER asked **SEN. DOHERTY** if there is any imposition upon the Commissioner of Political Practices' office to verify content; that they are simply collecting and storing the information? **SEN. DOHERTY** responded that was correct.

SEN. PETE EKEGREN asked **SEN. DOHERTY** what has been accomplished? **SEN. DOHERTY** said this bill would make those people verify they are telling the truth.

Closing by Sponsor: **SEN. DOHERTY** closed SB 49.

{Tape : 2; Side : A; Approx. Time Counter : 6}

HEARING ON SB 51

Sponsor: **SEN. DON HARGROVE, SD 16, Belgrade**

Proponents: Tom Schneider, MPEA
Tom Biladeau, MEAMFT
Mark Taylor, Association of Montana Highway
Patrolmen
Leroy Schramm, Chief Legal Council for Montana

Opponents: None

Opening Statement by Sponsor:

SEN. DON HARGROVE said this bill offers a vehicle for limited healthcare expense trust accounts for public employees - VEBA. This bill would provide a way to use un-used sick leave to put in

a medical insurance account; the un-used sick leave hours could be put into a qualified medical account to use for medical costs.

Proponents' Testimony:

Tom Schneider, MPEA, said this bill deals with trying to help people pay for their health insurance after they retire. The advantage of VEBA is that you can put money into the account without paying tax on it. You can then spend the money for health insurance premiums or costs without paying tax on it. This is money that is going to be paid anyway. This bill would allow you to pre-put that money into the account so that it would have the effect of the market, whereas, right now, that money just sits there until you either quit or retire and then you get 25% based on your final salary. With the VEBA account, the money will earn interest, it will build up, save the taxes, and hopefully you would have some money to pay either medical expenses or medical premiums. **Mr. Schneider** stated two concerns about this bill; one concern is **Mr. Schneider** thinks 120 hours are not enough hours. He prefers the limit would be raised to 240 hours. **Mr. Schneider** is also concerned that the cash option is still left available. He said either everybody has to put money into the VEBA or else have nobody put money in.

Tom Biladeau, MEAMFT, supports this bill overall, but stated he is concerned about the 120 hours named in this bill. He would prefer the required hours be increased to 240 hours. Another concern is listed in Section seven in the bill where it specifies how a particular employee group will enter into a VEBA arrangement with their employer. **Mr. Biladeau** is concerned about constructive receipt. He said the employees should not have a choice whether to take cash instead of the medical benefits or else the IRS will consider the money as income. He said there may be a problem with these health care plans with allowing accrued accounts to pass to a beneficiary at the time of death. This is an issue that may perhaps need a special provision looked into.

Mark Taylor, Association of Montana Highway Patrolmen, expressed support for this bill. **Mr. Taylor's** concerns consist of the 120 hours and also under Section seven how a common association is formed.

Leroy Schramm, Legal Council for the University System, said he is in favor of this bill. **Mr. Schramm** stated he has the same concerns as **Tom Biladeau** that the election provisions do leave a lot of guess work with how they would work with collective bargaining. He is also concerned about having the option of taking cash or the medical benefits expressed by **Mr. Biladeau**.

Opponents: None

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 0}

SEN. JIM ELLIOTT asked **SEN. HARGROVE** how much sick leave can be accumulated? **SEN. HARGROVE** responded that the employees can accumulate twelve days per year with unlimited accrual.

SEN. BUTCHER asked why the employee cannot take the money out or use the money for medical benefits before he terminates employment? **SEN. HARGROVE** responded the law states the employee has to terminate employment prior to receiving these benefits.

Informational Testimony:

Sheri Heffelfinger, Legislative Staff Research Analyst for the State Administration Interim Committee, EXHIBIT(sts11a03) said the Voluntary Employee Benefit Association laws under the IRS allows the employee to take the money annually while the employee is working and put it into a qualified account and invest the money. There would be investment options that the Department of Administration would come up with and you could direct that. The reason you cannot do that with the medical savings account and cannot do that under a flexible spending account is because the tax structure prevents that. With the medical savings account, it has to be employee contributions after taxes; with the flexible spending account, it is pre-tax money and does not accrue - you either have to use it or lose it. The advantage of this vehicle is the employee can continue to save over the years and does not lose it if they don't use it. Current statutes prevent an employee from cashing out their sick leave until they terminate employment. This bill would not change that aspect. The intent of this bill is to allow the employees to annually designate how much money they want to put in.

SEN. KEN TOOLE asked **Sheri Heffelfinger** what happens with the balance of the account if the employee leaves after seven years? Can the employee take this account with them or does the account stay? **Sheri Heffelfinger** answered that the account is entirely portable. The former employee would no longer be able to contribute to the account because their other employer does not have the same program. However, you do not have to be a current active employee to access this account. They can still actively manage their account.

SEN. JOHN BOHLINGER asked **Sheri Heffelfinger** how the State Administration would invest the funds discussed in this bill? **Ms. Heffelfinger** answered the Department of Administration is

asked by the legislature to select which investments options to offer. The department contracts with the providers to provide those offers similar to the deferred compensation plan where you have a menu to select from.

{Tape : 2; Side : B; Approx. Time Counter : 13}

Closing by Sponsor: SEN. HARGROVE closed SB 51. SEN. HARGROVE said a lot of rule-making needs to be involved in this bill. He said it is very appropriate to use sick leave for medical benefits.

EXHIBIT(sts11a04) David Niss, Legislative Services, said this exhibit is information from John McEwen, Administrator of Personnel Division within the Department of Administration. This is information on the VEBA bill.

ADJOURNMENT

Adjournment: 11:40 A.M.

SEN. DON HARGROVE, Chairman

LYNETTE BROWN, Secretary

DH/LB

EXHIBIT(sts11aad)